
(2021) 12 TDSAT CK 0027

In the Telecom Disputes Settlement And Appellate Tribunal

Case No : Misc Application 429, 430 Of 2021 With Telecom Petition 92 Of 2019

Syniverse Technologies India Pvt. Ltd

APPELLANT

Vs

BSNL

RESPONDENT

Date of Decision : 09-12-2021

Acts Referred:

Citation : (2021) 12 TDSAT CK 0027

Hon'ble Judges : Shiva Kirti Singh, Chairperson; Subodh Kumar Gupta, Member

Bench : Division Bench

Advocate : Meet Malhotra, Shivani Khandekar, Ishan Bisht, Gokul Holani, Vishakha Ahuja

Final Decision : Disposed Of

Judgement

Heard learned senior counsel for the petitioner and learned counsel for BSNL - respondent in respect of MA No. 429 of 2021 through which petitioner has raised a grievance against a decision of BSNL as appearing from a letter dated 10.2.2021 (Annex. A-2 to the MA). The letter is on the subject of instructions / directions for pending payment of MNP invoices submitted by the petitioner and another similar service providers for MNP Per Port Transaction Charges (PPTC) after judgment dated 8.3.2019 passed in WP(C) No. 1507 of 2018 of Hon'ble High Court of Delhi.

There is no dispute that prior to 31.1.2018 under the earlier regulations PPTC was payable and was in fact being paid by the concerned Mobile Service providers to mobile number portability service providers @ Rs. 19/- per porting request. Wef 31.1.2018, TRAI amended the relevant regulations so as to reduce the rate of Rs. 19/- to Rs. 4/- payable only for each successful portability request.

The amendment related only to two aspects, one to the rate and another to confine the charge only to a successful request for portability and not to all requests. Both the amendments affected the petitioner and other similar service providers. Their challenge to the amendment in Delhi High Court was successful

and the amendment was struck down by judgment dated 8.3.2019 which appears to have acquired finality. TRAI has made amendments in the rate which has been made only for successful porting and the new amendment has come into effect from 11.11.2019.

In the letter of 10.2.2021, BSNL has accepted the judgement of the Delhi High Court from 8.3.2019 to 10.11.2019 so far as rate of Rs.19/- is concerned, but have taken a contrary stand to the judgement by deciding that the charge of Rs. 19/- will be paid not for portability request processed by the service provider but only for successful porting request.

After going through the judgement of Hon'ble High Court of Delhi carefully and finding that the amendment made by TRAI after the judgement is effected only from 11.11.2019, there is no difficulty in holding that the stand of BSNL as reflected in the letter of 10.2.2021 is erroneous and contrary to interpretation of the relevant provisions of relevant Regulations governing portability charges which will govern the parties after the amendment of 31.1.2018 was struck down by the Hon'ble Delhi High Court. The interpretation given by the Hon'ble Delhi High Court is in a judgement to which the Regulator was a party, such judgement in respect of a Regulation or similar statutory provision will definitely bind all service providers governed by the Regulations including BSNL. Hence, the prayer made in the MA is allowed. Respondent - BSNL is directed not to withhold any amounts unilaterally on the basis of distinction between successful and unsuccessful porting requests for the period after 8.3.2019.

It goes without saying that if any amount is found payable in view of orders passed today, that should be paid without any delay and there can be no question of BSNL attempting to recover any money on the basis of its mis-conceived legal stand reflected in the letter of 10.2.2021 (Annexure A-2 to the MA).

The MA is allowed and disposed of accordingly.

Post the matter before the Court of Registrar on 20.12.2021 for passing necessary orders and directions to make the petition ready for hearing.